

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA

AT CHARLESTON

DIANA J. BURGESS,

Plaintiff

v.

Civil Action No.: 2:09-1163

MICHAEL J. ASTRUE,  
Commissioner of  
Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER

The court has received the Proposed Findings and Recommendation ("PF&R") of United States Magistrate Judge Mary E. Stanley, entered on December 2, 2010, relating to the parties' separate requests for judgment on the pleadings and plaintiff's alternative request for remand.

The magistrate judge recommends that the court affirm the final decision of the Commissioner and dismiss this action. The material analysis offered by the magistrate judge is as follows:

The ALJ considered and relied on the reports from Claimant's various therapists in concluding that Claimant's major depressive disorder ["MDD"] and post traumatic stress disorder ["PTSD"] were "severe"

impairments, despite two State agency medical sources finding that Claimant's MDD and PTSD were not severe impairments. Additionally, the ALJ took those impairments into account when he limited Claimant to work involving only simple instructions, routine and repetitive tasks, and only occasional interaction with the public. Further, it is clear from the excerpt of the ALJ's opinion found on pages 23 through 25 of these proposed findings, that the ALJ did not "pick and choose which mental status exams to review" nor did the ALJ simply base his opinion on one GAF score of 69 as alleged by Claimant.

The court proposes that the presiding District Judge find that the ALJ properly evaluated the records from the treating therapists, which showed that Claimant had some limitations related to her mental impairments of MDD and PTSD but was capable of making a successful adjustment to other work that exists in significant numbers in the national economy.

(PF&R at 32 (citations omitted)).<sup>1</sup>

On December 20, 2010, plaintiff objected. She asserts that the Commissioner's decision was not based upon substantial evidence. She renews two contentions raised before, and rejected by, the magistrate judge. First, she asserts that the ALJ disregarded "numerous mental status exams that were marked with inadequate sleep, inappropriate affect, moods, low energy, or poor appetite." (Pl.'s Objecs. at 1). Second, she contends that

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<sup>1</sup>The acronym GAF represents The Global Assessment of Functioning, "a quick and simple measure of overall psychological disturbance." S.H. Jones et al., A Brief Mental Health Outcome Scale-Reliability and Validity of the Global Assessment of Functioning (GAF), British J. of Psych. (May 1995), abstracted by Medline Abstracts No. 95346155.

the ALJ inappropriately predicated his decision on a single GAF score that was not indicative of plaintiff's actual ability to function.

First, the ALJ did not disregard plaintiff's mental status reports. He permissibly concluded that they did not support a disability finding. For example, the February 24, 2009, mental status examination, conducted at the request of plaintiff's counsel, lacked support in the form of either treatment records or plaintiff's longitudinal history. The ALJ thus did not err in attributing little weight to the examination.

Second, the ALJ did not predicate his decision on a single GAF score. He simply referenced that outcome, along with other evidence, in declining to afford substantial weight to the February 24, 2009, examination. He was entitled to do so under the governing regulations.

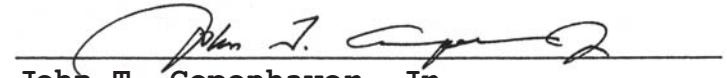
Based upon the foregoing analysis, the court concludes that plaintiff's objections are meritless. It is accordingly ORDERED as follows:

1. That the findings and recommendation in the PF&R be, and they hereby are, adopted by the court and incorporated herein;

2. That the plaintiff's requests for judgment on the pleadings and for remand be, and they hereby are, denied;
3. That the Commissioner's request for judgment on the pleadings be, and it hereby is, granted; and
4. That the decision of the Commissioner be, and it hereby is, affirmed.

The Clerk is directed to forward copies of this written opinion and order to all counsel of record.

DATED: January 24, 2011



John T. Copenhaver, Jr.  
United States District Judge